

AMENDED IN SENATE AUGUST 22, 2006  
AMENDED IN SENATE AUGUST 7, 2006  
AMENDED IN ASSEMBLY MAY 26, 2006  
AMENDED IN ASSEMBLY MARCH 15, 2006  
AMENDED IN ASSEMBLY FEBRUARY 27, 2006  
CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1849**

---

**Introduced by Assembly Member Leslie**  
**(Coauthors: Assembly Members Benoit, Cogdill, Cohn, Daucher,**  
**DeVore, Emmerson, Harman, Haynes, Shirley Horton, Huff,**  
**Leno, Maze, Mountjoy, Strickland, and Wyland)**

January 12, 2006

---

An act to amend Section 290.46 of the Penal Code, relating to sex offenders.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1849, as amended, Leslie. Sex offenders.

Existing law requires the Department of Justice to make information concerning certain persons who are required to register as sex offenders available to the public via an Internet Web site, including the offender's criminal history.

This bill would also require that on or before July 1, 2010, the year of the conviction of the offender's last sexual offense, the year of release from incarceration for that offense, and whether he or she was subsequently incarcerated for any other felony, be posted on the Internet Web site, as specified. This bill would also require any state

or local facility that releases a sex offender to provide the year of conviction and year of release for his or her most recent offense requiring registration as a sex offender to the department, or that releases a person who is required to register as a sex offender from incarceration whose incarceration was for a felony committed subsequently to the offense for which he or she is required to register to advise the department, as specified.

Because this bill would require local officials to perform additional duties, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

*This bill would provide that it shall only become operative if SB 1128 is enacted.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 290.46 of the Penal Code is amended to  
2 read:  
3 290.46. (a) (1) On or before the dates specified in this  
4 section, the Department of Justice shall make available  
5 information concerning persons who are required to register  
6 pursuant to Section 290 to the public via an Internet Web site as  
7 specified in this section. The department shall update the Internet  
8 Web site on an ongoing basis. All information identifying the  
9 victim by name, birth date, address, or relationship to the  
10 registrant shall be excluded from the Internet Web site. The name  
11 or address of the person's employer and the listed person's  
12 criminal history other than the specific crimes for which the  
13 person is required to register shall not be included on the Internet  
14 Web site. The Internet Web site shall be translated into languages  
15 other than English as determined by the department.

1 (2) (A) On or before July 1, 2010, the Department of Justice  
2 shall make available to the public, via an Internet Web site as  
3 specified in this section, as to any person described in  
4 subdivisions (b), (c), or (d), the following information:

5 (i) The year of conviction of his or her most recent offense  
6 requiring registration pursuant to Section 290.

7 (ii) The year he or she was released from incarceration for that  
8 offense.

9 (iii) Whether he or she was subsequently incarcerated for any  
10 other felony, if that fact is reported to the department. If the  
11 department has no information about a subsequent incarceration  
12 for any felony, that fact shall be noted on the Internet Web site.

13 However, no year of conviction shall be made available to the  
14 public unless the department also is able to make available the  
15 corresponding year of release of incarceration for that offense,  
16 and the required notation regarding any subsequent felony.

17 (B) (i) Any state or local facility that releases from  
18 incarceration a person who was incarcerated because of a crime  
19 for which he or she is required to register as a sex offender  
20 pursuant to Section 290 shall, within 30 days of release, provide  
21 the year of conviction and year of release for his or her most  
22 recent offense requiring registration to the Department of Justice  
23 in a manner and format approved by the department.

24 (ii) Any state or local facility that releases a person who is  
25 required to register pursuant to Section 290 from incarceration  
26 whose incarceration was for a felony committed subsequently to  
27 the offense for which he or she is required to register shall,  
28 within 30 days of release, advise the Department of Justice of  
29 that fact.

30 (iii) Any state or local facility that, prior to January 1, 2007,  
31 released from incarceration a person who was incarcerated  
32 because of a crime for which he or she is required to register as a  
33 sex offender pursuant to Section 290 shall provide the year of  
34 conviction and year of release for his or her most recent offense  
35 requiring registration to the Department of Justice in a manner  
36 and format approved by the department.

37 (iv) Any state or local facility that, prior to January 1, 2007,  
38 released a person who is required to register pursuant to Section  
39 290 from incarceration whose incarceration was for a felony  
40 committed subsequently to the offense for which he or she is

1 required to register shall advise the Department of Justice of that  
2 fact in a manner and format approved by the department.

3 (b) (1) On or before July 1, 2005, with respect to a person  
4 who has been convicted of the commission or the attempted  
5 commission of any of the offenses listed in, or who is described  
6 in, paragraph (2), the Department of Justice shall make available  
7 to the public via the Internet Web site his or her name and known  
8 aliases, a photograph, a physical description, including gender  
9 and race, date of birth, criminal history, the address at which the  
10 person resides, and any other information that the Department of  
11 Justice deems relevant, but not the information excluded pursuant  
12 to subdivision (a).

13 (2) This subdivision shall apply to the following offenses and  
14 offenders:

15 (A) Section 207 committed with intent to violate Section 261,  
16 286, 288, 288a, or 289.

17 (B) Section 209 committed with intent to violate Section 261,  
18 286, 288, 288a, or 289.

19 (C) Paragraph (2) or (6) of subdivision (a) of Section 261.

20 (D) Section 264.1.

21 (E) Section 269.

22 (F) Subdivision (c) or (d) of Section 286.

23 (G) Subdivision (a), (b), or (c) of Section 288, provided that  
24 the offense is a felony.

25 (H) Subdivision (c) or (d) of Section 288a.

26 (I) Section 288.5.

27 (J) Subdivision (a) or (j) of Section 289.

28 (K) Any person who has ever been adjudicated a sexually  
29 violent predator as defined in Section 6600 of the Welfare and  
30 Institutions Code.

31 (c) (1) On or before July 1, 2005, with respect to a person  
32 who has been convicted of the commission or the attempted  
33 commission of any of the offenses listed in paragraph (2), the  
34 Department of Justice shall make available to the public via the  
35 Internet Web site his or her name and known aliases, a  
36 photograph, a physical description, including gender and race,  
37 date of birth, criminal history, the community of residence and  
38 ZIP Code in which the person resides or the county in which the  
39 person is registered as a transient, and any other information that  
40 the Department of Justice deems relevant, but not the information

1 excluded pursuant to subdivision (a). On or before July 1, 2006,  
2 the Department of Justice shall determine whether any person  
3 convicted of an offense listed in paragraph (2) also has one or  
4 more prior or subsequent convictions of an offense listed in  
5 paragraph (2) of subdivision (a) of Section 290, and, for those  
6 persons, the Department of Justice shall make available to the  
7 public via the Internet Web site the address at which the person  
8 resides. However, the address at which the person resides shall  
9 not be disclosed until a determination is made that the person is,  
10 by virtue of his or her additional prior or subsequent conviction  
11 of an offense listed in paragraph (2) of subdivision (a) of Section  
12 290, subject to this subdivision.

13 (2) This subdivision shall apply to the following offenses:

14 (A) Section 220, except assault to commit mayhem.

15 (B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

16 (C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or  
17 (i), of Section 286.

18 (D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or  
19 (i), of Section 288a.

20 (E) Subdivision (b), (d), (e), or (i) of Section 289.

21 (d) (1) On or before July 1, 2005, with respect to a person  
22 who has been convicted of the commission or the attempted  
23 commission of any of the offenses listed in, or who is described  
24 in, this subdivision, the Department of Justice shall make  
25 available to the public via the Internet Web site his or her name  
26 and known aliases, a photograph, a physical description,  
27 including gender and race, date of birth, criminal history, the  
28 community of residence and ZIP Code in which the person  
29 resides or the county in which the person is registered as a  
30 transient, and any other information that the Department of  
31 Justice deems relevant, but not the information excluded pursuant  
32 to subdivision (a) or the address at which the person resides.

33 (2) This subdivision shall apply to the following offenses and  
34 offenders:

35 (A) Subdivision (a) of Section 243.4, provided that the offense  
36 is a felony.

37 (B) Section 266, provided that the offense is a felony.

38 (C) Section 266c, provided that the offense is a felony.

39 (D) Section 266j.

40 (E) Section 267.

1 (F) Subdivision (c) of Section 288, provided that the offense is  
2 a misdemeanor.

3 (G) Section 647.6.

4 (H) Any person required to register pursuant to Section 290  
5 based upon an out-of-state conviction, unless that person is  
6 excluded from the Internet Web site pursuant to subdivision (e).  
7 However, if the Department of Justice has determined that the  
8 out-of-state crime, if committed or attempted in this state, would  
9 have been punishable in this state as a crime described in  
10 subparagraph (A) of paragraph (2) of subdivision (a) of Section  
11 290, the person shall be placed on the Internet Web site as  
12 provided in subdivision (b) or (c), as applicable to the crime.

13 (e) (1) If a person has been convicted of the commission or  
14 the attempted commission of any of the offenses listed in this  
15 subdivision, and he or she has been convicted of no other offense  
16 listed in subdivision (b), (c), or (d) other than those listed in this  
17 subdivision, that person may file an application with the  
18 Department of Justice, on a form approved by the department, for  
19 exclusion from the Internet Web site. If the department  
20 determines that the person meets the requirements of this  
21 subdivision, the department shall grant the exclusion and no  
22 information concerning the person shall be made available via  
23 the Internet Web site described in this section. He or she bears  
24 the burden of proving the facts that make him or her eligible for  
25 exclusion from the Internet Web site. However, a person who has  
26 filed for or been granted an exclusion from the Internet Web site  
27 is not relieved of his or her duty to register as a sex offender  
28 pursuant to Section 290 nor from any otherwise applicable  
29 provision of law.

30 (2) This subdivision shall apply to the following offenses:

31 (A) A felony violation of subdivision (a) of Section 243.4.

32 (B) Section 647.6, provided the offense is a misdemeanor.

33 (C) (i) An offense for which the offender successfully  
34 completed probation, provided that the offender submits to the  
35 department a certified copy of a probation report, presentencing  
36 report, report prepared pursuant to Section 288.1, or other official  
37 court document that clearly demonstrates both of the following:

38 (I) The offender was the victim's parent, stepparent, sibling, or  
39 grandparent.

1 (II) The crime did not involve either oral copulation or  
2 penetration of the vagina or rectum of either the victim or the  
3 offender by the penis of the other or by any foreign object.

4 (ii) An offense for which the offender is on probation at the  
5 time of his or her application, provided that the offender submits  
6 to the department a certified copy of a probation report,  
7 presentencing report, report prepared pursuant to Section 288.1,  
8 or other official court document that clearly demonstrates both of  
9 the following:

10 (I) The offender was the victim's parent, stepparent, sibling, or  
11 grandparent.

12 (II) The crime did not involve either oral copulation or  
13 penetration of the vagina or rectum of either the victim or the  
14 offender by the penis of the other or by any foreign object.

15 (iii) If, subsequent to his or her application, the offender  
16 commits a violation of probation resulting in his or her  
17 incarceration in county jail or state prison, his or her exclusion,  
18 or application for exclusion, from the Internet Web site shall be  
19 terminated.

20 (iv) For the purposes of this subparagraph, "successfully  
21 completed probation" means that during the period of probation  
22 the offender neither received additional county jail or state prison  
23 time for a violation of probation nor was convicted of another  
24 offense resulting in a sentence to county jail or state prison.

25 (f) The Department of Justice shall make a reasonable effort to  
26 provide notification to persons who have been convicted of the  
27 commission or attempted commission of an offense specified in  
28 subdivision (b), (c), or (d), that on or before July 1, 2005, the  
29 department is required to make information about specified sex  
30 offenders available to the public via an Internet Web site as  
31 specified in this section. The Department of Justice shall also  
32 make a reasonable effort to provide notice that some offenders  
33 are eligible to apply for exclusion from the Internet Web site.

34 (g) (1) A designated law enforcement entity, as defined in  
35 subdivision (f) of Section 290.45, may make available  
36 information concerning persons who are required to register  
37 pursuant to Section 290 to the public via an Internet Web site as  
38 specified in paragraph (2).

39 (2) The law enforcement entity may make available by way of  
40 an Internet Web site the information described in subdivision (c)

1 if it determines that the public disclosure of the information  
2 about a specific offender by way of the entity's Internet Web site  
3 is necessary to ensure the public safety based upon information  
4 available to the entity concerning that specific offender.

5 (3) The information that may be provided pursuant to this  
6 subdivision may include the information specified in subdivision  
7 (b) of Section 290.45. However, that offender's address may not  
8 be disclosed unless he or she is a person whose address is on the  
9 Department of Justice's Internet Web site pursuant to subdivision  
10 (b) or (c).

11 (h) For purposes of this section, "offense" includes the  
12 statutory predecessors of that offense, or any offense committed  
13 in another jurisdiction that, if committed or attempted to be  
14 committed in this state, would have been punishable in this state  
15 as an offense listed in subparagraph (A) of paragraph (2) of  
16 subdivision (a) of Section 290.

17 (i) Notwithstanding Section 6254.5 of the Government Code,  
18 disclosure of information pursuant to this section is not a waiver  
19 of exemptions under Chapter 3.5 (commencing with Section  
20 6250) of Title 1 of Division 7 of the Government Code and does  
21 not affect other statutory restrictions on disclosure in other  
22 situations.

23 (j) (1) Any person who uses information disclosed pursuant to  
24 this section to commit a misdemeanor shall be subject to, in  
25 addition to any other penalty or fine imposed, a fine of not less  
26 than ten thousand dollars (\$10,000) and not more than fifty  
27 thousand dollars (\$50,000).

28 (2) Any person who uses information disclosed pursuant to  
29 this section to commit a felony shall be punished, in addition and  
30 consecutive to any other punishment, by a five-year term of  
31 imprisonment in the state prison.

32 (k) Any person who is required to register pursuant to Section  
33 290 who enters an Internet Web site established pursuant to this  
34 section shall be punished by a fine not exceeding one thousand  
35 dollars (\$1,000), imprisonment in a county jail for a period not to  
36 exceed six months, or by both that fine and imprisonment.

37 (l) (1) A person is authorized to use information disclosed  
38 pursuant to this section only to protect a person at risk.

39 (2) Except as authorized under paragraph (1) or any other  
40 provision of law, use of any information that is disclosed



1 pursuant to this section for purposes relating to any of the  
2 following is prohibited:

3 (A) Health insurance.

4 (B) Insurance.

5 (C) Loans.

6 (D) Credit.

7 (E) Employment.

8 (F) Education, scholarships, or fellowships.

9 (G) Housing or accommodations.

10 (H) Benefits, privileges, or services provided by any business  
11 establishment.

12 (3) This section shall not affect authorized access to, or use of,  
13 information pursuant to, among other provisions, Sections 11105  
14 and 11105.3, Section 8808 of the Family Code, Sections 777.5  
15 and 14409.2 of the Financial Code, Sections 1522.01 and  
16 1596.871 of the Health and Safety Code, and Section 432.7 of  
17 the Labor Code.

18 (4) (A) Any use of information disclosed pursuant to this  
19 section for purposes other than those provided by paragraph (1)  
20 or in violation of paragraph (2) shall make the user liable for the  
21 actual damages, and any amount that may be determined by a  
22 jury or a court sitting without a jury, not exceeding three times  
23 the amount of actual damage, and not less than two hundred fifty  
24 dollars (\$250), and attorney's fees, exemplary damages, or a civil  
25 penalty not exceeding twenty-five thousand dollars (\$25,000).

26 (B) Whenever there is reasonable cause to believe that any  
27 person or group of persons is engaged in a pattern or practice of  
28 misuse of the information available via an Internet Web site  
29 established pursuant to this section in violation of paragraph (2),  
30 the Attorney General, any district attorney, or city attorney, or  
31 any person aggrieved by the misuse is authorized to bring a civil  
32 action in the appropriate court requesting preventive relief,  
33 including an application for a permanent or temporary injunction,  
34 restraining order, or other order against the person or group of  
35 persons responsible for the pattern or practice of misuse. The  
36 foregoing remedies shall be independent of any other remedies or  
37 procedures that may be available to an aggrieved party under  
38 other provisions of law, including Part 2 (commencing with  
39 Section 43) of Division 1 of the Civil Code.

1 (m) The public notification provisions of this section are  
2 applicable to every person described in this section, without  
3 regard to when his or her crimes were committed or his or her  
4 duty to register pursuant to Section 290 arose, and to every  
5 offense described in this section, regardless of when it was  
6 committed.

7 (n) On or before July 1, 2006, and every year thereafter, the  
8 Department of Justice shall make a report to the Legislature  
9 concerning the operation of this section.

10 (o) A designated law enforcement entity and its employees  
11 shall be immune from liability for good faith conduct under this  
12 section.

13 SEC. 2. If the Commission on State Mandates determines  
14 that this act contains costs mandated by the state, reimbursement  
15 to local agencies and school districts for those costs shall be  
16 made pursuant to Part 7 (commencing with Section 17500) of  
17 Division 4 of Title 2 of the Government Code.

18 SEC. 3. *This bill shall only become operative if Senate Bill*  
19 *1128 of the 2005–06 Regular Session is also enacted and*  
20 *becomes effective on or before January 1, 2007.*